

In re) Fair Hearing No. 11,765
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Appeal of)

The petitioner appeals the decision of the Department of Social Welfare finding her eligible for food stamps as of the date of her application rather than from the first day of the calendar month in which she filed her application. The issue is whether any action or inaction by workers at the district office requires the Department to grant the petitioner retroactive food stamps.

In late November, 1992, the petitioner, who was a recipient of supplemental fuel assistance, came to the Department's district office to speak with her caseworker about applying for other Department programs. The petitioner admits that she was agitated that day because of personal problems she was having. The receptionist told the petitioner that her regular worker was on vacation, but that she could see another caseworker. The petitioner asked the receptionist if she was required to fill out a written application for any additional assistance and was told (correctly) that she was. The petitioner stated she was in a hurry, and she declined to either fill out an application or wait to see the other worker. As she was leaving the office the petitioner yelled

to the receptionist to have her regular worker call her at home that day. Although there is some dispute whether the receptionist had made it clear to the petitioner that her regular worker was on vacation, the petitioner left the district office abruptly before the receptionist could attempt to explain anything further.

At any rate, nobody from the district called the petitioner, and the petitioner did not call or return to the district office until December 8, 1992 (about two weeks after her earlier visit), when she again went to the district office in person. On that day she stated that she was out of fuel and demanded to see a new caseworker because her present worker had not called her back after her previous visit. She was told she could apply for emergency fuel assistance and file a written complaint about her previous treatment, which the petitioner did while she waited to see someone about emergency fuel.¹

¹The petitioner's written complaint was as follows:

I was in the Dept. of Welfare Office in [District] prior to Thanksgiving (92) exact date I am not sure and [caseworker] was not available so I asked the receptionist if I wanted additional assistance would I have to fill out additional forms. She told me yes. I said I didn't want to do that so would she please have [caseworker] call me. [Caseworker] has never done this. I feel she is neglectful and do not want her as a worker. I am not sure which way would be best for me to pursue, so it would of been nice for her to call me before I was in a/this crisis situation.

I believe I deserve respect and have never gotten from this Dept. This is a continuous response from many workers here. They should be thankful they have a job not

After the petitioner wrote out her complaint, the District Director met with her in her office. The petitioner demanded that the District Director assign a new caseworker to her case (the petitioner's regular worker had returned from her vacation). The District Director declined to assign a new worker but discussed the petitioner's situation with her and advised the petitioner to apply for ANFC, Medicaid, and food stamps. The petitioner was given another worker for emergency fuel, who authorized a 100 gallon fuel delivery to the petitioner that same day. However, the petitioner refused to fill out an application for any other programs until she was assigned a new regular caseworker. Thus, the petitioner left the district office that day without applying for any other benefits but with the understanding that her complaint about her caseworker would be forwarded to the Department's state office. Unfortunately, however, the District Director did not immediately pass the petitioner's complaint on to the state office because she had understood that the petitioner was refusing to fill out a written application regardless of who her worker was.² Therefore, the District Director felt that the petitioner's complaint about not getting a new worker was essentially "moot". On or about December 22, 1992, the petitioner returned to the district office to inquire about

treat people who don't like dirt.

²See Footnote 1, supra.

the status of her complaint. After this visit the District Director promptly forwarded the complaint to the state office.

Over the course of the next two weeks the petitioner had several phone conversations with the Chief of Operations in the Department's state office. It was ultimately agreed that the district office would assign a new caseworker to the petitioner and that the petitioner would apply for other programs.

On January 7, 1993, the petitioner returned to the district office, was given a new caseworker, and applied for Medicaid and food stamps. The Department granted her Medicaid effective the first of the month according to its regulations. However, because food stamp regulations allow for payment only as of the date of application (see infra), the petitioner received a prorated allotment for January effective as of that day.

The petitioner maintains that because of her "mistreatment" by her caseworker, and the delay by the District Director in processing her subsequent complaint, she should receive food stamps effective as of at least January 1, 1993.³ Even accepting all the facts alleged by the petitioner, however, it cannot be found that the district office treated the petitioner inappropriately. Without

³At the hearing (held on March 11, 1993) the petitioner admitted that as a practical matter there was no other effective "relief" the board could grant at this time regarding her complaints against the district.

question, there was some miscommunication; but this appears to have resulted more from the petitioner's agitation and confrontiveness than from any malfeasance by the district.

At worst, the district failed to call the petitioner back after she had left the office in November, and it failed to promptly pass along the petitioner's subsequent complaint about this to the state office. Considering the circumstances, however, neither of these actions rises to anywhere near the level necessary to establish a legal basis (see infra) for the petitioner to claim entitlement to more benefits than those that she eventually received.

It is an unfortunate, but all-too-common, fact of life that busy individuals and offices sometimes don't return phone calls. What the petitioner perceives to have been a deliberate discourtesy appears to have been no more than an inadvertent miscommunication. However, even if it could be found that the Department was "at fault" in not calling the petitioner, the petitioner's reaction was out of all proportion to the alleged "offense". After she abruptly left the district office that day in November the petitioner did not contact the Department again for nearly two weeks. At all times, the petitioner was fully aware of her right and obligation to apply for benefits--something the district office repeatedly advised her to do. While, with the benefit of hindsight, it can, perhaps, be concluded that the District Director should have forwarded the petitioner's complaint to

the Department's state office more promptly, under the circumstances her confusion over the petitioner's position was understandable.⁴

It was entirely the petitioner's decision to demand the assignment of a new caseworker before she would apply for benefits. Although, to its credit, the state office eventually chose to end this impasse by granting the petitioner's request for a new caseworker, it cannot be concluded that the Department was legally obligated to do this. The fact that the Department eventually chose to accede to the petitioner's demand does not establish, as a matter of either fact or law, that the demand itself was reasonable.

For all the above reasons, it cannot be concluded either that the district's failure to call the petitioner or that its delay in forwarding the petitioner's complaint to the state office "caused" the petitioner not to file an application for food stamps before she in fact did so.

ORDER

The Department's decision is affirmed.

REASONS

Food Stamp Manual § 273.10(a)(1)(ii) provides, in pertinent part:

A household's benefit level for the initial month of

⁴See Footnote 1, supra.

certification shall be based on the day of the month it applies for benefits and the household shall receive benefits from the date of application to the end of the month...

In this case there is no question that the petitioner received food stamps from the date she applied (January 7, 1993) to the end of that month. To establish entitlement to benefits prior to the date she applied, the petitioner must establish a factual basis sufficient to legally "estop" the Department from using the date of her application as the effective date of her entitlement to food stamps.

The four essential elements of equitable estoppel are:

- (1) the party to be estopped must know the facts;
- (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting the estoppel has a right to believe it is so intended;
- (3) the party asserting estoppel must be ignorant of the true facts; and
- (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped.

Burlington Fire Fighter's Ass'n v. City of Burlington, 149 Vt. 293, 299 (1988); and Stevens v. D.S.W., Vt. Supreme Court, Docket No. 91-227 (Dec. 11, 1992).

Based on the evidence in this case it must be concluded that the Department did nothing at any time to discourage or dissuade the petitioner from filing an application for food

stamps. In fact, it repeatedly advised the petitioner to do so. As a result, the petitioner was at all times fully aware of her right and obligation to file an application. Her failure to do so prior to January 7th resulted from her unreasonable "linkage" of the issue of getting a new caseworker with the act of filing an application for benefits. Thus, although it is arguable whether any of the above criteria for estoppel exist in this case, it is clear that the second, third, and fourth elements are not met.

Inasmuch as the Department's decision in the petitioner's case is fully in accord with the pertinent regulations it must be affirmed. 3 V.S.A. § 3091(d) and Food Stamp Fair Hearing Rule No. 17.

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